



CHESTERFIELD COUNTY ADMINISTRATIVE POLICIES AND PROCEDURES

Department: Human Resource Management
Subject: Americans with Disabilities Act

Policy Number: 6-18
Supersedes: New
Date Issued: 07/24/98

I. INTRODUCTION

Part I of this administrative procedure explains the principles of Title I of the Americans with Disabilities Act (ADA) and provides compliance guidance to County departments/offices. Part II outlines the grievance procedure individuals with disabilities may follow when discriminated against in any employment practice or when unfairly restricted from accessing County facilities, services or activities.

Under the ADA, an individual with a disability is a person who:

- A. Has a physical or mental impairment that substantially limits one or more major life activities
- B. Has a record of such an impairment
- C. Is regarded as having such an impairment

II. PART I

Title I of The Americans with Disabilities Act makes it unlawful to discriminate against a qualified individual with a disability in job application procedures, hiring, firing, advancement, compensation, job training, and in other terms, conditions and privileges of employment. Chesterfield County fully supports the policies and guidelines as enacted by the Americans With Disabilities Act of 1990. Chesterfield County policy prohibits discrimination against a qualified individual with a disability in any employment practice.

A. Definitions

1. ***Direct Threat*** – A significant risk to the health or safety of the individual or others which cannot be eliminated by reasonable accommodation.
2. ***Essential Functions*** – A job duty is an essential job function if performing the function is the reason the position exists and if not performing the function alters the nature of the position.
3. ***Major Life Activities*** – The basic activities that a person can perform with little or no difficulty. Major life activities include, but are not limited to, caring for oneself, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working.
4. ***Qualified Individual with a Disability*** – A person who meets legitimate skill, experience, education and other requirements of an employment position that he or she holds or seeks, and who can perform the “essential functions” of the position with or without reasonable accommodation.
5. ***Reasonable Accommodation*** – Modifications or adjustments made for the known disability of an employee or applicant by structuring the job or the work environment in a manner that will enable the person with a disability to perform the essential functions of a job. Reasonable accommodation includes, but is not limited to, modifying written or oral examinations; making facilities accessible; adjusting work schedules; restructuring jobs; providing assistive devices; and/or services.
6. ***Undue Hardship*** – An action requiring significant difficulty or expense when considered in light of a number of factors including the nature and cost of the

accommodation in relation to the size, resources, nature, and structure of the employer's operation.

B. Activities Prohibited under the ADA – Under the ADA, it is unlawful to:

1. Ask applicants if they are disabled or about the nature or severity of a disability
2. Make pre-employment inquiries about the medical/psychological status of an applicant. This includes topics such as vision, blood pressure, previous injuries or illnesses
3. Require an applicant to take a medical examination (including many forms of psychological examinations) before making a job offer
4. Inquire if an applicant has previously filed a worker's compensation claim
5. Refuse to hire a qualified applicant or retain an employee because a reasonable accommodation is required for the individual to perform the job (exceptions may be made when hiring or retaining a person with a disability would result in a direct threat to the employee or co-workers or cause an undue hardship as defined in the Act)
6. Fail to interview or test a qualified applicant because of his or her disability
7. Reject a qualified applicant because he or she has a condition or illness which is likely to become a disability at some time in the future

C. General Employment Guidelines

1. *Job Application Procedures and Hiring*

- a. The interviewer may ask a job applicant if they can perform particular job functions. If an applicant has a disability known to the employer, the employer may ask how they can perform job functions that the employer considers difficult or impossible to perform because of the disability, and whether accommodation is needed.
- b. A department/office is free to select the most qualified applicant available based on job related criteria and to make decisions based on reasons unrelated to the existence or consequence of a disability.
- c. A job offer may be conditioned on the results of a medical examination, provided the examination is required for all employees in the same job category regardless of disability.

2. *Reasonable Accommodation*

- a. Accommodations must be made on an individual basis, because the nature and extent of a disabling condition and requirements of the job vary in each case. If an individual does not request an accommodation, the department/office is not obligated to provide one. If a person with a disability requests an accommodation, but cannot suggest one, department/office management and the individual should work together to find a suitable accommodation. If the reasonable accommodation is refused by the individual, the department/office has met their obligation under the ADA and is not required to take further action.
- b. An individual requiring an accommodation must be otherwise qualified, and the disability made known to the employing authority. County departments/offices should use all resources at their disposal to accommodate an individual with a disability, including resources available from other County departments/offices.
- c. The ADA provides that the County cannot require a qualified individual with a disability to accept an accommodation that is neither requested nor needed by the individual. However, if a necessary reasonable accommodation is refused, the individual may be considered not qualified.

3. ***General***

- a. Under ADA, County departments/offices may establish position qualification standards that will exclude individuals who pose a direct threat or significant risk to the health and safety of others, if the risk cannot be lowered to an acceptable level by reasonable accommodation.
- b. Factors to be considered when determining if job functions are essential include considerations as to whether the reason the position exists is to perform that function; the number of other employees among whom the performance of the function could be distributed; and the degree of expertise required to perform the function.
- c. ADA is intended to enable persons with disabilities to perform in the work place based on the same performance standards and requirements that the County expects of persons without disabilities.

D. **Responsibilities**

1. ***Human Resource Management*** – The Department of Human Resource Management (HRM) has overall responsibility for assuring that the County of Chesterfield is in compliance with Title I of the ADA. HRM is also responsible for providing information on the ADA to the workforce, monitoring reasonable accommodation efforts and investigating complaints concerning the employment provisions of the ADA.
2. ***Departments/Offices***
 - a. Shall review position description questionnaires to ensure that they are up-to-date, accurately describe the position as it exists, and carefully distinguish between essential and nonessential functions. Special attention should be given to positions with specific physical requirements.
 - b. Shall review the selection process(es) used by the department/office to ensure that they adhere to ADA requirements. Communicate ADA selection standards to staff involved in the interview and selection processes.
 - c. Shall ensure that medical records retained by the department/office are maintained separately from other personnel files.
3. ***Employees*** – Each employee is responsible for providing quality service to all citizens and being sensitive to the needs of citizens and co-workers with disabilities. If an employee becomes disabled and needs reasonable accommodation to perform the essential job functions of their position, they must notify their supervisor of such disability, the accommodation which is needed and provide supporting medical documentation.

III. **PART II**

Procedure for employee, applicant or citizen complaint filed under the ADA:

- A. Any individual with a disability who has been discriminated against in any employment practice or who has been unfairly restricted from accessing County facilities, services, or activities on account of disability may submit a complaint in writing to the County's ADA Compliance Officer.
- B. The ADA Compliance Officer or designee shall investigate the complaint and within ten (10) business days from receipt of the complaint issue a written response to the complainant which will state whether or not the complaint is covered by the ADA and how the issue will be addressed.

- C. The complainant may appeal the ADA Compliance Officer's decision by filing a written request for appeal within ten (10) business days of the ADA Compliance Officer's decision. The ADA Compliance Officer will forward the appeal to the County Administrator or his designee who shall review the complaint and issue a determination within ten (10) business days.
- D. The use of this complaint procedure shall not be a prerequisite to the pursuit of other remedies available under applicable law.